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CIA considers prosecution of Washington Post for story

By Walter V. Robinson
Globe Staff

WASHINGTON – The Central Intelligence Agency yesterday weighed whether to recommend criminal prosecution against the Washington Post, even though the Post withheld some classified details from an article yesterday about a US intelligence operation that was allegedly compromised by an accused spy.

The prepublication threats of prosecution lodged against the Post and other news organizations by CIA Director William J. Casey prompted an outcry by news editors, press advocates and some constitutional law scholars fearful that the Reagan administration is seeking to unlawfully intimidate the news media.

One of those scholars, Harvard Law School Prof. Laurence H. Tribe, asserted that Casey is using a 1950 statute that bars disclosure of communications intelligence information to intimidate the press without seeking a court injunction that would test the merits of his national security arguments.

At the White House, spokesman Larry Speakes said President Reagan was convinced that publication of the material would have done "irreparable harm" to the country's national security interests and said the CIA would decide whether to ask the Justice Department to prosecute the Post for what it did report.

A CIA spokeswoman refused to comment on the issue except to say that the article is being reviewed by agency lawyers. Earlier this week, Casey said he would urge that NBC be prosecuted for another report on the issue.

In its report, the Post said former National Security Agency employee Ronald W. Pelton, whose espionage trial began this week, sold information to the Soviet Union that compromised a highly successful operation that employed US submarines to intercept Soviet communications.

The article, which also appeared in yesterday's Globe, said Pelton's information enabled the Soviets to uncover the operation and recover a sophisticated US "high technology" device. Further details about the device and the operation were not included in the report.

At the Post, which weathered the full fury of the Nixon administration for its Watergate reporting and published segments of the Pentagon Papers under threat of prosecution, some staff members privately expressed the belief that their paper had succumbed to pressure from Casey and Reagan.

Stephen Hess, a senior fellow at the Brookings Institution who is a specialist in White House-media relations, expressed the same view.

"I'm stunned that the Post capitulated in this way. It is totally out of character for the macho newspaper that (Post Executive Editor) Benjamin Bradlee runs. I don't know why they gave in," Hess said.

But Bradlee, in a telephone interview, bluntly rejected suggestions that the Post had been intimidated by Casey's threats of prosecution.

"In this game, you have to prove you've got balls every day. Well, we haven't made a career out of bowing to candy-ass pressure like that" and the paper wasn't intimidated by threats in this instance either, Bradlee declared.

Rather, he said, the paper omitted only three or four technical paragraphs about the intelligence operation and then only after persistent pleas by Casey and a Reagan call to Post Company board chairman Katharine Graham.

Said Bradlee: "Our decision was based on the fact that the highest authority in the land was telling us that we were about to commit a treasonous act. Even if you disagree with that, and I did, that's a red light you go through very slowly."

Although other sources, including White House officials, said the Post withheld substantial information, Bradlee described the omission as "a couple of technical paragraphs, the useful social purpose of which is really up for argument."

Like others, Bradlee said he doubts that publication of the information would tell the Soviets anything they don't already know about a program that was disclosed in detail in news reports as far back as 1975.

In a separate interview, Graham said Reagan, whom she sees socially from time to time, raised the possibility of criminal prosecution of the Post with her in a May 10 telephone call, although she said he did so in a "perfectly civil, nonthreatening conversation."

"I came to the conclusion that I couldn't make any judgment other than that there was sufficient doubt" to withhold some material, she said. "Their argument was a serious one."

Bradlee said Casey and Reagan asserted that the Soviet Union might not know all the details that the Post planned to report and that other US adversaries also might benefit from the Post's information.

He refused to disclose a third objection that he said related directly to the unpublished information.

Tribe, like other lawyers, said in a telephone interview that Casey's threats amount to an unconstitutional prior restraint against publication but said it is likely that only a criminal prosecution would settle the constitutionality of the 1950 law as it applies to the press.

Referring to the law cited by Casey, Tribe said, "It's very dangerous for the health of the country, not only for a free press but for an informed citizenry, for the executive branch to effectivly concoct an Official Secrets Act that Congress is not willing to enact and to use the threat of prosecution under the act to manage the news in a way that the courts may never have a chance to react to if newspapers succumb to this kind

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of pressure."

He added: "It's easy to imagine that a newspaper with less backbone than the Post would be more easily cowed."

Howard Simons, a former Post managing editor who is curator of the Nieman Foundation for Journalists at Harvard, said he believes that Casey's tactics are likely to have a "chilling effect" in newsrooms. "As he continues to threaten, the press will continue to think twice before publishing," he said.

Like other editors, Chicago Tribune Editor James D. Squires said it would be unfair to second-guess the Post decision without knowing the full details.

But Squires accused the administration of adopting a double standard by threatening prosecution for disclosure of some information.

"But when the president, the secretary of state, their aides, the attorney general and the FBI director conclude that it's in the country's best interest and their own to routinely leak sensitive secrets, they forget that they have the power to prosecute," he said.

Globe staff reporter Steven Kurkjian contributed to this story.

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